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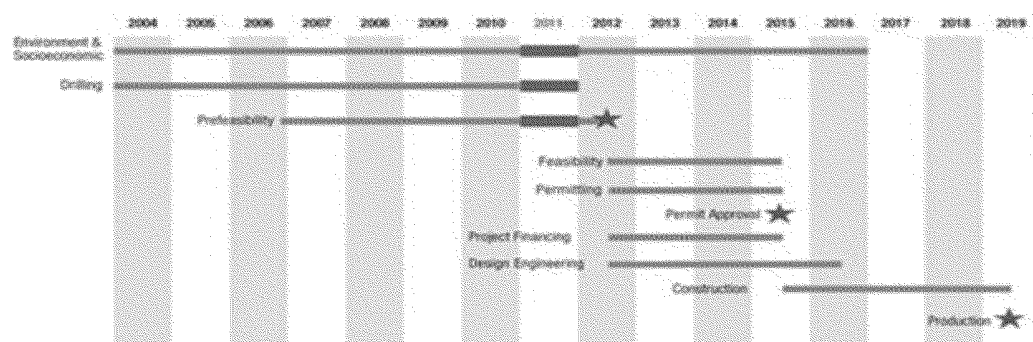
To: Palmer Hough, EPA; Rick Parkin, EPA  
CC: Phil North, EPA  
From: Geoffrey Y. Parker  
Re: An overlapping schedule speeds up EPA's watershed assessment and 404(c) process related to metallic sulfide mining in the Kvichak and Nushagak drainages.  
Date: February 14, 2012

This recommends that EPA shift from a "linear" to an "overlapping" schedule for its watershed assessment and 404(c) process. Doing so can maintain and improve quality, and should result in a legally more defensible final decision. In a linear schedule, each step depends on completing a prior step. In an overlapping schedule, the timing of various steps overlaps others.

EPA's current schedule appears basically linear. Completing each step for the most part depends on completing a prior step. I understand that the schedule looks something like this:

Early Mar. 2012	Early May 2012	May - early June 2012	Late June and July 2012	Aug. 2012	Late Nov. or early Dec. 2012	Jan. 2013 or later	Feb. 2013 or later
Circulate inter-agency draft <i>Kvichak-Nushagak watershed assessment</i>	Release public review draft <i>Kvichak-Nushagak watershed assessment</i>	Public meetings, hearings on public review draft <i>Kvichak-Nushagak watershed assessment</i>	Peer review of draft <i>Kvichak-Nushagak watershed assessment</i>	Completion of peer review of public review draft <i>Kvichak-Nushagak watershed assessment</i>	Final <i>Kvichak-Nushagak watershed assessment</i> . 404(c) notice to the Corps. Release draft 404(c) determination for public comment	Public comment and hearings on draft 404(c) determination	EPA's final decision on making a 404(c) determination if any.

By contrast, NDM and PLP use an overlapping schedule. NDM's current timeline is at [http://www.northerndynastyminerals.com/ndm/P\\_PS.asp](http://www.northerndynastyminerals.com/ndm/P_PS.asp) :



A famous example of an overlapping schedule is construction of Liberty Ships during World War II. The first used a linear method and took 244 days to build. Then, shipyards used an

overlapping method by which modules were built at the same time and assembled. The same ships were built on average in 42 days. See [http://www.jajones.com/pdf/Liberty\\_Ships\\_of\\_WWII.pdf](http://www.jajones.com/pdf/Liberty_Ships_of_WWII.pdf).

Here is an example of an overlapping schedule for reaching a 404(c) decision during the current Administration. (I have highlighted the potentially overlapping tasks in yellow and put potentially overlapping documents in italics.)

Early Mar. to early May 2012	May to early June 2012	Late June and July 2012	Aug. 2012	Sept. 2012 to late Nov. or early Dec. 2012	Oct. to Late Nov. 2012	Dec. 2012 or early Jan. 2013
<b>Phase 1: Inter-agency review</b> >>>>>>>>>>> →	<b>Phase 2: First phase of public comment and peer review.</b>			<b>Phase 3: Second phase of public comment and peer review, and Final Decision</b>		
EPA circulates for interagency comment, a pre-peer review, pre-public comment, draft of <i>Kvichak-Nushagak watershed assessment and notice to agencies</i> that EPA is considering releasing this in May (after interagency review) as a pre-peer review draft for public comment on a combined draft watershed assessment and draft 404(c) determination.	<b>First set of public comments and hearings in Phase 2.</b> >>>>>>>>>>>>>>>>>→			<b>Second set of public comments and hearings in Phase 3.</b> >>>>>>>>>>>>>>>>>→		
	<b>Peer review in Phase 2</b> >>>>>>>>>>>>>>>>>→ (peer rev. ends early to mid-Aug)				<b>Peer review in Phase 3</b> >>>>>>>>>>>>>>>>>→	
	>>>>>>>>>>>>>>>>→ EPA revises document				>>>>>>>>>>>>>>>>→ EPA revises document	
	EPA releases <i>post-inter-agency, pre-peer review draft of a Kvichak-Nushagak watershed assessment and potential 404(c) determination.</i>  EPA holds public meetings and hearings. This allows the public, agencies, and NDM/PLP to raise issues that should be addressed in peer review.  <b><u>Alternative #1 for timing of Notice to Corps:</u></b> EPA could issue a 404(c) notice to the Corps <u>in May</u> that metallic sulfide mining could have an unacceptable	EPA submits for peer review the <i>draft Kvichak-Nushagak watershed assessment and potential 404(c) determination.</i>  <b><u>Alternative #2 for timing of Notice to Corps:</u></b> EPA could issue a 404(c) notice to the Corps, <u>in late June</u> , that metallic sulfide mining could have an unacceptable adverse effect under 404(c).	Peer reviewers complete their review (in Phase 2) of public review draft, including in light of comments by agencies, public, PLP/NDM, etc.  <b><u>Alternative #3 for Notice to Corps:</u></b> EPA could issue a 404(c) notice to the Corps, <u>in early to mid-August</u> , that metallic sulfide mining could have an unacceptable adverse effect under 404(c).	EPA releases <i>post-Phase 2, peer reviewed draft Kvichak-Nushagak watershed assessment and draft 404(c) determination.</i>  EPA holds public meetings and hearings on post-peer review draft.  <b><u>Alternative #4 for Notice to Corps:</u></b> EPA could issue a 404(c) notice to the Corps, <u>in September</u> , that metallic sulfide mining could have an unacceptable adverse effect under 404(c).	EPA submits for additional peer review (in Phase #3) the <i>draft Kvichak-Nushagak watershed assessment and proposed final 404(c) determination.</i>	EPA's issues Final Decision on making a 404(c) determination, and the Final Determination, if any.

adverse effect under 404(c).					
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This overlapping schedule has substantive and other advantages. First, it allows two phases of peer review. This should create a better, and legally more defensible, final decision. By contrast, the existing schedule allows only one phase of peer review, and it is for the assessment, rather than for the 404(c) document, even though the two documents are likely to be substantially similar.

Second, this overlapping schedule allows two phases of comments by the public, including PLP/NDM, and three phases by agencies, on a document that would be accurately described as possibly resulting in a 404(c) determination. Each phase can influence the final determination. This is fairer to everyone, because everyone will know that they are reviewing a document that may result in a final determination. By contrast, the existing schedule allows one phase of comment on a draft watershed assessment, and one phase of comment on a proposed 404(c) determination. This invites confusion over the relationship of these two documents. Having two phases of comment on a combined draft-assessment-draft-potential-404(c)-determination should assist peer review, improve efficiency, and further improve the legal defensibility of a final decision. To see this, put yourself in the shoes of the public, or a court for that matter. Having two documents, i.e., a separate watershed assessment and a separate 404(c) document forces one to compare one to the other. Combining them does not and is straightforward, transparent, and efficient.

Third, to the extent that political considerations arising from the 2012 election may be a factor in EPA's timing, this schedule offers four alternative points at which EPA's Regional Administrator could issue a 404(c) notice to the Corps, which requires only a finding that metallic

sulfide mining in the Kvichak and Nushagak drainages “could” have an unacceptable adverse effect on resources and uses that are subject to protection under Section 404(c). I do not profess know the political considerations of others, but I assume that issuing such a notice more in advance of the election is preferable to issuing it closer to the election.

Fourth, in the event that the President is not re-elected, this schedule gets to a 404(c) determination before the end of the current administration. EPA’s current schedule is unlikely to do so.

Finally, if PLP withheld substantive content of its studies from its recently released reports (i.e., the so-called “data dump”), then this schedule encourages PLP to be forthcoming sooner, rather than later. By contrast, EPA’s current schedule encourages PLP to withhold information until advantageous to release it, presumably after EPA provides notice to the Corps, which under the current schedule occurs very late in 2012. Under an over-lapping schedule, the notice to the Corps could occur much sooner, at any of the points identified on the above overlapping schedule.

I encourage you think about reaching a 404(c) decision as if EPA were building a Liberty Ship.

Best regards, Jeff Parker